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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,780

01/10/2007

Ewald Schmon

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6277

27317 7590 02/12/2009  
Fleit Gibbons Gutman Bongini & Bianco PL  
21355 EAST DIXIE HIGHWAY  
SUITE 115  
MIAMI, FL 33180

EXAMINER

JONAITIS, JUSTIN M

ART UNIT

PAPER NUMBER

3752

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,780	<b>Applicant(s)</b> SCHMON ET AL.	
	<b>Examiner</b> JUSTIN JONAITIS	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/10/2008 &amp; 04/17/2007 &amp; 08/08/2006</u> .            | 6) <input type="checkbox"/> Other: ____.                          |



## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "19" has been used to designate both thread and outlet opening. See Figures, 2, 5, & 6 and page 2 of the specification (last paragraph).

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the membrane, point, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 11 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the membrane and sharp point are not disclosed by the diagrams. The claimed limitations appear on page 6 of the specification but fail to disclose how the parts are located as well as the reason for their usage..

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,435,426 to Copp, Jr. in view of U.S. Patent #2,721,004 to Schultz.

11. In re claims 1 and 3, Copp, Jr. discloses a fluid reservoir for a paint spray gun with a **receptacle (Cup (10))** and a **lid (threaded Lid (30))** that can be placed thereon, the fluid reservoir has a **connecting element (Fitting (14))** in order to place the fluid reservoir on the paint spray gun, wherein the receptacle has a ventilation part that can be closed by **means of a valve [column 4, lines 38-47]** which has a **housing arranged on the container (co-axial opening (32))**.

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12. However, Copp Jr. does not disclose a valve with a closure element, which has a housing that's a **cylindrical projection (neck (10))**, that has two valve seats arranged one behind the other in the direction of flow, wherein the closure element can be displaced relative to the valve housing between a first valve position (closed) and a second valve position (open) which can be fixed using a snap fit or gripping element. Copp Jr. also does not disclose the lid being the portion that has the connecting element attached to it.

13. However, Schultz teaches that it is known to use a closure element which has two seats which slides up and is fixed in the first and second valve positions by a snap fit using **gripping elements (external threads (11) & (12))**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a sliding closure element as taught by Schultz since Schultz states at column 1, lines 25-27 that such modification would provide a closure which may be opened and closed with minimum effort.

14. In regards to the lid portion having the connecting element, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the connecting element on the lid instead of the receptacle, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

15. In re claims 2, 4, 10, and 15, Copp, Jr. in view of Schultz teaches the invention as described above in which the valve seat has two sealing surfaces, the first valve seat formed by **wall (Inside of neck (10))** and the second valve seat is formed by **outer wall (threads (11) and (12))** of the **projection (neck (10))**. The structure also includes an **opening (discharge port (B))** which provides an air passage from the interior of the container to the outside when the element is in the second valve position and the closure element is **seated in a way that it grips the container (via threads)**.

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16. In re claim 5 and 9, Copp, Jr. in view of Schultz teaches the invention as described above where the closure member is capable of being snapped into place on the **projection (neck (10))** via **catch elements (threads (11, 12, 23))** which are formed on the inner side of the **base body (hollow cylindrical body (21))** as well as the outer wall of the **projection (neck (10))**.

17. In re claim 6, Copp, Jr. in view of Schultz teaches the invention as described above including the closure element being formed from a hollow cylindrical base body (Hollow cylindrical body (21)) with a plug (cylindrical projection (25)) which projects into the interior of the base body (neck (10)) and the end functions as a stopper for closing of the ventilation part.

18. In re claim 7, Copp, Jr. in view of Schultz teaches the invention as described above including the closure element engages with the ventilation part in the first valve position and rests against the **wall (Interior of neck (10))** to form the first sealing surface and simultaneously inner surface of **base body (hollow cylindrical body (21))** rests against the **outer wall of projection (neck (10))** to form the second sealing surface.

19. In re claim 8, Copp, Jr. in view of Schultz teaches the invention as described above but fails to disclose the stopper and ventilation part being formed conically.

20. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the stopper and ventilation part conically since it was known in the art that a conical shape allows for a tighter sealing (for example a cork).



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21. In re claim 13, Copp Jr. in view of Schultz teaches the invention as described above but fails to disclose the outlet opening formed in the **connecting element (fitting (14))** is able to be closed by the closure element.

22. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the connecting element in such a way to allow the closure element to cap both the vent and the outlet because Applicant has not disclosed that the vent and the outlet being sealable using the same closure element provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with different size or style plugs because a different style or size plug would also be effective at sealing the fluid from the interior of the chamber.

23. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,435,426 to Copp, Jr. in view of U.S. 2,721,004 to Schultz in further view of U.S. Patent #6,540,114 to Popovich et al.

24. Copp Jr. in view of Schultz teaches the invention as described above but fails to disclose the closure element being formed on the lid via a predetermined breaking point constructed as a pull off tab and can be torn off for closing the ventilation part or outlet opening.

25. Popovich et al. teaches that it is known to attach the closing element to the lid of the fluid reservoir. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tab that connects closure element to the lid as taught by Popovich et al., since such modification would provide a lid that wouldn't get lost before being unattached as well as reducing the steps and components needed in manufacturing the device.

### ***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. PG-Pub 2006/0113409 to Camilleri et al. discloses a spray gun cup which has a plug with similar internal structure capable of being used on both ends of the device. U.S. Patent #5,588,562 to Sander et al. discloses a plastic closure which has similar components and structure. U.S. Patent #6,874,664 to Montgomery discloses a closure with similar structure. U.S. Patent #6,039,218 to Beck discloses closure with similar structure and multiple seats. U.S. PG-Pub 2004/0129738 to Stukas discloses a cap with similar structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/JUSTIN JONAITIS/

Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752